

lit.

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

CECIL F. JOHNSON,)	
)	
Appellant,)	PCHB No. 91-20
)	
v.)	
)	
SPOKANE COUNTY AIR POLLUTION)	FINAL FINDINGS OF FACT,
CONTROL AUTHORITY,)	CONCLUSIONS OF LAW
)	AND ORDER
Respondent.)	
_____)	

This matter is an appeal of Spokane County Air Pollution Control Authority's (SCAPCA) Notice and Order of Civil Penalty Order No. 04518, two-hundred, fifty dollars (\$250) fine for allegedly causing or allowing an open fire without a permit, in the area of Forty-Fifth Court, Spokane, WA, on December 15, 1990.

A formal hearing was held in the Federal Courthouse, West 904 Riverside Street, Spokane, WA, on October 4, 1991. Annette S. McGee presided and tape recorded the proceedings. Chairman Harold S. Zimmerman has reviewed the record.

Appellant Cecil F. Johnson represented himself, and Attorney Thomas F. Kingen, Perkins Coie, represented respondent SCAPCA. Proceedings were recorded by court reporter Louise M. Becker, Gene Barker and Associates, Olympia, Washington.

Witnesses were sworn and testified. Exhibits were admitted and examined. Argument was made. From the testimony recorded, exhibits examined and argument made, the Board makes these:

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 91-20

1 FINDINGS OF FACT

2 I

3 Cecil F. Johnson, a General Contractor since 1962, appealed
4 Spokane County Air Pollution Control Authority's Notice of Civil
5 Penalty No. 4518, assessed at two-hundred, fifty dollars (\$250) for
6 alleged violation on December 15, 1990, of SCAPCA's Article VI,
7 Section 6.01 of Regulation I and Chapter 173-425 of the Washington
8 Administrative Code (WAC). The penalty was for burning without a
9 permit.

10 II

11 On December 15, 1990, at about 11:53 A.M., Spokane County Fire
12 District Number 8 received a 911 telephone fire call from a party on
13 Highway 27, approximately 1/2 to 3/4 miles west of where they saw
14 smoke coming from. The caller described a large flat column of black
15 smoke coming from the west end of Forty-Fifth Court which is located
16 in Spokane County approximately seven or eight miles southeast of the
17 City of Spokane.

18 Assistant Chief William Walkup of Fire District 8 responded to
19 the call. The smoke described usually means a structure or vehicle
20 burning. Therefore, Chief Walkup alerted other departments to respond
21 as well.

22 III

23 Walkup was working at home at the time of the call and had to
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1 travel about six miles to the dispatched site. He did not see any
2 other outdoor fires along the way.

3 Walkup arrived at the scene of the fire at 12:15 p.m. and found
4 burning materials of slash, construction debris and a piece of
5 carpet. The fire was small, measuring approximately 10 x 10 feet and
6 2 1/2 to 3 feet in height. He immediately cancelled the other alerted
7 response agencies.

8 Mr. and Mrs. Johnson were at the burn site, and Walkup discussed
9 the requirement of a burning permit. Johnson said that he didn't have
10 a permit because he didn't know one was needed. Johnson had no
11 equipment on site to put out the fire, so he let it burn out.

12 Walkup recognized Johnson from past encounters and told him that
13 he was reporting the incident to SCAPCA.

14 IV

15 December 15, 1990, was a Saturday, and Walkup called Fred O.
16 Gray, Environmental Engineer for SCAPCA, at home to report the fire
17 that he had responded to. He followed up the telephone call by
18 sending Gray the notes and documented reports.

19 Gray evaluated the documents provided to him by the Fire District
20 and issued a Field Notice of Violation to Cecil Johnson on January 14,
21 1991, for burning without a permit.

22 V

23 On January 15, 1991, Gray issued SCAPCA's Notice of Violation and
24
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1 Civil Penalty Order Number 04518, assessing Cecil Johnson two hundred
2 fifty dollars (\$250) for violating SCAPCA's Article VI, Section 6.01,
3 Regulation I and Chapter 173-425 Washington Administrative Code (WAC),
4 for allegedly permitting and maintaining an open fire without a permit
5 on December 15, 1990, in the vicinity of Forty-Fifth Court, Spokane,
6 Washington.

7 VI

8 Appellant Johnson did not dispute the fact that he was burning
9 without a permit on December 15, 1990, on Veradale Lane near the
10 Forty-Fifth Street area. He does contend that he did not know that he
11 needed a permit to burn and there were other outdoor fires in the
12 area. He burns every year during the winter months.

13 December 15, 1991, was a day that SCAPCA required all permitted
14 burning of outdoor fires to have a DNR permit, except agriculture
15 fires.

16 SCAPCA does allow twenty-three days a year for citizens to burn
17 permitted matter, without a burn permit. December 15, 1990, was not
18 one of these days.

19 VII

20 The Spokane County Fire District Number 8 and SCAPCA have had
21 previous contacts and discussions with Cecil Johnson about burning
22 without a permit.
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1 On April 14, 1987, SCAPCA Inspector Chris McEnany issued Notice
2 of Violation No. 4055 to "Bud" Johnson, 4303 Ball Drive, Greenacres,
3 Washington, for allegedly burning slash and yard cleaning debris
4 without a permit. McEnany was on site and requested that Johnson
5 extinguish the fire, which he did. Regulations and permits were
6 discussed.

7 On April 24, 1987, a Civil Penalty assessed at fifty dollars
8 (\$50) was issued to C.F. Johnson, 4303 Ball Drive, Greenacres, based
9 on the above Notice of Violation No. 4055.

10 On April 24, 1987, SCAPCA Director Fred O. Gray reduced the above
11 Civil Penalty to twenty dollars (\$20). Johnson paid the reduced
12 penalty.

13 VIII

14 On August 23, 1989, Assistant Chief William Walkup responded to a
15 fire complaint call. Upon arrival at the scene, he found Mr. Johnson
16 burning lumber and other construction wastes. Permits were
17 discussed. However, more emphasis was put on the fact that Johnson
18 was illegally burning prohibitive material, and that a burn permit
19 could not be issued for an illegal burn.

20 IX

21 On September 8, 1989, Walkup again responded to a complaint from
22 a neighbor in the vicinity on Forty-Fifth Court about unattended fires
23 at a new home site, 14425 E. Forty-Fifth Court, Spokane, near Belle
24

1 Vista Drive. Responding to the scene, Walkup noticed four burning
2 piles. They measured approximately 10 x 10 feet, 5 x 5 feet, 10 x 15
3 feet and 30 x 30 feet. Two of the burn piles had escaped the burn
4 lines and traveled out on surrounding vegetation, thus escaping their
5 origin. He noted the burning of tiles, lumber, plastics, wire
6 insulation, rubber-backed carpet and paint or varnish cans. The
7 Department extinguished the fires and reported the incident to the
8 SCAPCA. Cecil Johnson was doing contract work at the site.

9 X

10 On September 15, 1989, SCAPCA Inspector Hank Nelson issued Notice
11 of Violation No. 4315 to Bud Johnson for burning illegal materials on
12 September 8, 1989.

13 On December 5, 1989, SCAPCA Director Fred O. Gray sent certified
14 Notice of Violation No. 4315 and Civil Penalty one-hundred dollars
15 (\$100) to Bud Johnson, East 14425 - Forty-Fifth Court, Spokane, for
16 alleged permitting and maintaining an open fire without a permit,
17 violation of Article VI, Section 6.01, Regulation I and WAC 173-425 on
18 or about 4:18 p.m., September 8, 1989, at Forty-Fifth court, 600 feet
19 east of Belle Vista Drive.

20 XI

21 Mr. Johnson returned the above Notice and Penalty and explained
22 that the new owner of the property, Fred Zirkle, had started the fires
23 and left, leaving Johnson at the scene with no DNR permits.

Zirkle had applied for the permit, but DNR refused to issue one after they arrived on site, and saw the fires already burning. Mr. Johnson denied having anything to do with these fires. Consequently, the penalty was suspended.

XII

A letter from Fred Gray, Director of SCAPCA was sent to Fred Zirkle on January 7, 1990, explaining the sequence of events, discussing the need for permits and also warning that any subsequent fires of this nature will subject Zirkle up to one thousand dollars (\$1,000) penalty per day. The Civil Penalty issued to "Bud" Johnson was dropped.

XIII

There has been no contention or evidence presented that Bud Johnson and Cecil Johnson are not the same individual.

XIV

The Board takes notice of SCAPCA's Article VI, Section 6.01, (Open Fires) and 173-425 WAC.

XV

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board makes these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these parties and the subject

1 matter. Chapter 70.94 and 43.21B RCW.

2 II

3 SCAPCA has the burden of proof.

4 III

5 SCAPCA has the authority under the Clean Air Act, 70.94 RCW, to
6 implement regulations to carry out a program of air quality control in
7 the geographical area of Spokane County.

8 IV

9 This case focuses on the appeal of SCAPCA's Notice of Violation
10 and Civil Penalty Order No. 04518, assessing Cecil Johnson
11 two-hundred, fifty dollars (\$250) for allegedly violating Article VI,
12 Section 6.01, Regulation I of the Authority on December 15, 1990.
13 Prior to this event, testimony and evidence demonstrates that
14 representatives from Spokane County Fire District 8 and SCAPCA have
15 discussed with Mr. Johnson the need for a burning permit when burning
16 outdoors. Furthermore, SCAPCA issued two previous Notices of
17 Violations and Civil Penalty Orders to Mr. Johnson citing the same
18 violation (burning without a permit). April 24, 1987, and September
19 15, 1989. See Finding of Fact VIII and XI. The Board concludes that
20 SCAPCA did not prove that violations had occurred in the prior two
21 Civil Penalties. However, the Board further concludes, because of the
22 above, Cecil Johnson was aware that a permit was needed when burning
23 outdoors.

V

Chapter 70.94 RCW, the Washington Clean Air Act, authorizes SCAPCA to implement the provisions of the act.

SCAPCA Article VI, Section 6.01(B)(2) states in part that:

*Applicability . . .
Open burning for activities subject to permit issuing
authority of the DNR, as given in RCW 70.94.660.*

No evidence was presented that Cecil Johnson or anyone else had obtained a DNR permit as required. We conclude that there was no permit for the September 8, 1989 burn on 14425E., Forty-Fifth Court, Spokane.

VI

Because Cecil Johnson was at the scene of the fire on December 15, 1990 (see Finding of Fact III), was knowledgeable of the requirement of a DNR permit for burning and because no evidence was documented that he wasn't involved in the burning, the Board concludes that he is in violation of Article VI, Section 6.01, SCAPCA's Regulation I for causing or allowing an open fire with no permit.

VII

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law, the Board enters the following

ORDER

Notice and Order of Civil Penalty No. 4518 in the assessed fine of two-hundred fifty dollars (\$250) is AFFIRMED.

DONE this 26th day of November, 1991.

POLLUTION CONTROL HEARINGS BOARD

Annette S. McGee
ANNETTE S. M^cGEE, Presiding

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Chairman